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**James Freas**  
Acting Director

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**PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** October 9, 2015  
**MEETING DATE:** October 13, 2015  
**TO:** Land Use Committee of the Board of Aldermen  
**FROM:** James Freas, Acting Director of Planning and Development  
Alexandra Ananth, Chief Planner of Current Planning  
Daniel Sexton, Senior Planner  
**RE:** Information for Working Session  
**CC:** Petitioners

In response to questions raised at the Land Use Committee public hearings and/or staff's technical reviews, the Planning Department is providing the following information for the upcoming continued public hearing and/or working session. This information is supplemental to staff analysis previously provided at the public hearing.

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**PETITION #416-12(4) AND (5)**

**242-244 Commonwealth Avenue**

Proposal of MAIN GATE REALTY, LLC to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL for a CHANGE in a NONCONFORMING USE granted under #416-12(3), in August 12, 2013, to allow office and storage space in the basement and re-stripe an existing parking lot to create five parking stalls, where four currently exist, and to waive the dimensional requirements for the proposed parking stall; and a proposal of JULIA WILLIAMSON AND MAIN GATE REALTY, LLC to AMEND the SPECIAL PERMIT/SITE PLAN APPROVAL application #416-12(4), for which a public hearing was opened on July 13, 2015, to permit more than 3 customers for the service use on-site at any one time and change the hours of operation of MODERN BARRE at 242-244 COMMONWEALTH AVENUE.

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The Land Use Committee (Committee) held a public hearing on July 13, 2015, which was held open so that the petitioners could respond to questions/concerns that were raised in the Planning Department's memorandum and at the public hearing by the Committee and public. The petitioners were encouraged to hold a neighborhood meeting with property owners in the area to discuss the proposed amendments to the nonconforming uses operating or proposed for the site, and to discuss parking related concerns. The petitioner's legal counsel provided an email on October 1, 2015 in response to the questions/concerns that were raised (**ATTACHMENT A**) and an annotated site plan was provided on October 6, 2015 to illustrate certain proposed changes to the site (**ATTACHMENT B**).

**Community Meeting Results.** The petitioners facilitated a neighborhood meeting with property owners in the surrounding area on August 17, 2015 to discuss the proposed amendments to the previously approved special permits for the site. According to information provided by the petitioner's legal counsel, the attendees to the meeting were generally comfortable with commercial uses operating on the site, as long as those uses were not too intensive and didn't create parking problems for the immediate neighborhood. The specific concerns that were raised by residents included:

- Parking configuration and congestion on Manet Road;
- Loss of fencing;
- Snow removal, especially along sidewalks around the property; and
- Intensity of commercial uses (i.e. number of employees and customers, hours of operation, and maximum number of classes).

**Site and Use Controls.** Per comments and concerns raised by the Committee and abutters, the petitioners are proposing a number of stipulation to govern commercial activities on the site and minimize the visual impact of the site on abutting properties. To address the parking concerns, the petitioners are proposing to assign parking stalls on-site to each tenant (i.e. two parking stalls each for Modern Barre and Ruana Designs, and one new parking stall for the Landlord), and will prohibit tandem and customer parking in the current parking lot. Each establishment's customers will park along Commonwealth Avenue or the carriage road. Pedestrian enhancements will also be constructed along Manet Road via a sidewalk extension to ensure safe pedestrian egress along the property's frontage. To reduce the visual impact of the site, the petitioners are proposing to install a dense row of evergreen trees, to be eight feet high at planting, along a portion of the property line abutting the property at 252 Commonwealth Avenue, and a screened or fenced enclosure for trash receptacles. Further, a three-season fence, which can be removed during the winter to accommodate the storage of snow on a portion of the lawn, is also being proposed to be installed in the approximate location of the previous fence. These enhancements are depicted on the annotated site plan.

According to the petitioner, the service use (Ruanna Designs) and the proposed basement office space will not exceed those terms stipulated in the previous special permit. In terms of the Modern Barre fitness studio, the petitioner is proposing to limit the establishment's operations to:

- no more than 40 classes per week;
- build in a 15-minute buffer between classes; limit class sizes to one instructor and up to twelve clients; and
- limit studio operations from 7:00 a.m. to 9:30 p.m. Monday-Friday with no more than three classes beginning as early as 6:15 a.m., 8:00 a.m. to 5:00 p.m. on Saturday, and 9:00 a.m. to 5:00 p.m. on Sunday.

These operational restrictions are intended to allow the studio to grow over time, while giving the surrounding neighborhood an expected level of activity.

The Planning Department is supportive of the site enhancements and most of the operational stipulations proposed by the petitioners. The Planning Department believes the nearby on-street

parking capacity is adequate to support the level of parking demand anticipated for the existing and proposed uses, and acknowledges that more intensive uses have occupied the site in the past. With respect to the sidewalk and landscape improvements, the Planning Department believes the proposed enhancements will improve pedestrian and vehicle interactions along Manet Road and adequately buffer activities on the site. The Planning Department does, however, have reservations about the studio's future potential level of intensity, which does not take into account the success or change over time of the other uses on the site. To account for this potential level of change, the Planning Department is proposing a stipulation below for consideration by the Committee.

**Office Space.** The petitioner is requesting to revise the use configuration in the basement level. After further consideration of the basement space, the petitioner determined that development of the 250 square feet of office space in the front right/east side of the basement was more appropriate, but will require the erection of a new dividing wall (**ATTACHMENT C**). The remainder of the basement would be used as storage. In addition, the petitioner is requesting the ability to have, at times, a single assistant. Since only one parking stall will be designated to the office space, any assistant will park along Commonwealth Avenue or the carriage road. The Planning Department has no concerns with these requests.

**Recommendation.** The Planning Department believes the petition is complete at this time, and that the petitioners have provided responses to all the concerns/questions raised at the public hearing by the Committee, public, and staff. The petitioners are encouraged to consider the additional comments put forth by the Planning Department. The Planning Department recommends that the following stipulations be considered by the Committee for the requested special permit amendments:

- Prior to issuance of any building permit, the petitioner shall provide a final parking demand management plan for review and approval by the Director of Planning and Development;
- Limiting the approval of the special permit amendments related to the Modern Barre to a three-year term, with extensions allowed by the Board of Aldermen upon petition.

#### **ATTACHMENTS**

<b>Attachment A:</b>	Email Correspondence from Terrence P. Morris, Esq., dated October 1, 2015
<b>Attachment B:</b>	Annotated Site Plan, dated April 8, 2015
<b>Attachment C:</b>	Revised Basement Floor Plan, undated

FW: 242-244 Commonwealth Avenue

**ATTACHMENT A**

Terry Morris &lt;tpmorris.landuse.law@comcast.net&gt;

Thu 10/1/2015 12:05 PM

To: Daniel Sexton &lt;dsexton@newtonma.gov&gt;;

Cc: 'G. Michael Peirce' &lt;mpeirce@gmpeircelaw.com&gt;; 'Julia Williamson' &lt;julia@modernbarre.com&gt;;

Hi Dan,

Pursuant to our conversation just now I am forwarding you an email that was sent to Ken Parker last Friday from Michael and me setting forth what our clients are willing to agree to. Ken has informed us that expects some response from his client today who is returning from overseas travel. Nonetheless, with or without his response we are going forward with these terms which have been shared with the Chairman, Vice Chairman and Ald. Fuller.

Be Well,

*Terry*

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**From:** Terry Morris [mailto:tpmorris.landuse.law@comcast.net]**Sent:** Friday, September 25, 2015 3:52 PM**To:** 'Ken Parker' <KParker@parkerkeough.com>**Cc:** 'G. Michael Peirce' <mpeirce@gmpeircelaw.com>; 'Julia Williamson' <julia@modernbarre.com>; 'Wally Zainoun' <wallyz@tnmrealty.com>**Subject:** 242-244 Commonwealth Avenue

Dear Ken,

Michael and I have both conferred with clients. The following represents what has been agreed to in response to the concerns expressed both by your client as well as other neighbors.

To summarize:

1. Tandem parking will be prohibited.
2. There will be no customer or patron parking on site.
3. The five on-site spaces will assigned to specific tenants (2 each to the Studio and Ruana; 1 to the

landlord (LL)) and identified by signage similar to what already exists for Ruana. This will obviate the need for a placard system.

4. LL will not reduce the # of parking spaces from the 5 requested, and they will be installed as per the filed plan. With the prohibition on tandem, the limitation of who may park, along with the signage, the basic concerns with the parking facility use have been addressed.
5. As a result, LL will not install a turn out. As we have discussed, again with the above-referenced limitations of the use of the facility, the only people using it will be people who park there virtually every day and thus they are fully familiar with how to safely back out on to Manet Road. Also, as a site view discloses, virtually every property on Manet Road is designed in such a way that all residents and guests that use the various driveways have to back out. Thus this is not an unusual occurrence and one that likely occurs many, many times every day. Also, note that this site has gone before the board many times over the past 30-40 years and this has never come up as an issue, even when the parking facility was much larger and clearly used by tenants and their customers (a 1979 Ortho Plan shows a much larger lot). This is a 'solution' looking for a problem.
6. Nonetheless, LL will reduce the broad expanse of pavement that now serves the parking at the rear of the site, by extending the existing sidewalk that currently terminates north of the driveway, in a southerly direction along Manet Road to a distance (tbd) that does not impede safe vehicular egress from the site.
7. Screening: a dense evergreen screen, close on center, at 8' high at planting, will be installed and kept trimmed to that approximate height, along the entire property line that separates our property and the Noone property.
8. Fence: once the dense screening is in place we do not see a significant rationale for installing a 3-season fence, so-called, in the approximate location as was the previous fence. However, in the spirit of compromise will do so.
9. Trash Bins: with the screening and fencing installed the trash bins will remain in their current location available for pickup.
10. LL will agree to a condition that requires compliance with the city's sidewalk snow removal requirements for commercial properties;
11. LL will agree to a condition that will prohibit the use of the Ruana portion of the property, which is already approved for retail, to be used for a convenience store or any other high traffic generator, but he will NOT agree to a condition that would require any retail use of that space go before the board, since, as has been noted, that approval has already been granted by the prior board orders.
12. There shall be no more than forty (40) classes per week conducted at the Studio.
13. The classes shall be spaced so as to provide 15 minutes between the end of one class and the beginning of another class, so as to minimize the number of persons on site at any one time.
14. Class sizes shall be limited to one (1) instructor and up to twelve (12) clients;
15. The Studio hours of operation shall be from 7:00AM to 9:30PM Monday-Friday, 8:00AM to 5:00PM on Saturday and 9:00AM to 5:00PM on Sunday; however, three (3) classes per week (M-F) may begin as early as 6:15 AM.

Once you have had an opportunity to review this information with your client kindly let us know whether we are in accord. If your client is in communication with his closest neighbors and can obtain their input we would welcome a collective response. To the extent that we can agree (or not) we would like to put this matter back before the Land

Use Committee for discussion and disposition at its meeting on October 13, 2015. Thank you.

Be Well,

*Terry*

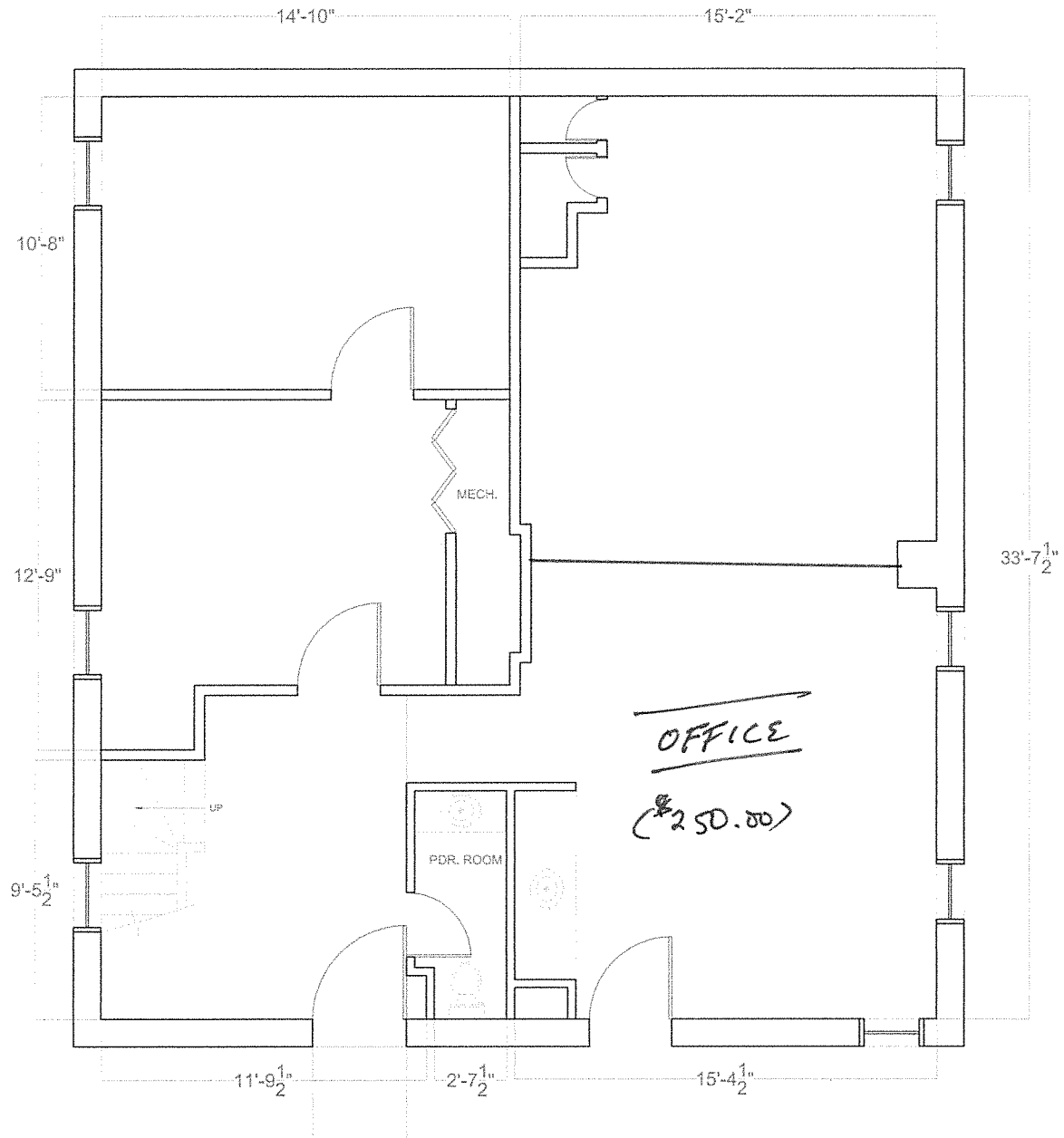
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In order to counter this request that is where you need to be strong on the fact that once the landlord has done all he has agreed to that your client's expanded classes will not negatively impact the neighborhood in any manner different from what was previously allowed under either of the 2 prior board orders. There is sufficient parking on the avenue, as determined three (3) times by the planning department and twice by the Board. You will have to address Noone's complaints about people turning around in his driveway, cars parked idling while allegedly someone awaits a customer of Julia's to finish class, etc.

[illegible]

COMMONWEALTH AVENUE  
(PUBLIC WAY)

# ATTACHMENT C



1 EXISTING BASEMENT FLOOR PLAN  
1/4" = 1' - 0"

